

REMARKS

Claims 1-26 are pending.

Claims 1, 7-9, and 18 are rejected.

Claims 2-6, 10-17, and 19-26 are allowed.

Claims 1-5, 7-10, and 18-21 are amended herein.

I. TELEPHONE INTERVIEW

On August 10, 2005, the Examiner participated in a telephonic interview with Applicant's counsel respecting the Final Office Action. Applicant and its counsel appreciate the opportunity to have this discussion and wish to thank the Examiners for the interview. The substance of the telephone interview is reflected in the Examiner's Interview Summary, dated August 10, 2005, (the "Examiner's Interview Summary") and as specified below.

II. AMENDMENT TO THE APPLICATION AND CLAIMS

During the August 10, 2005 telephone interview, Examiner and Applicant discussed the expressed definition appearing in the Application for "High Magnetic Field." Examiner's Interview Summary, at 2. Specifically, this definition reads:

"High Magnetic Field" shall mean a magnetic field in the range of 0.50 or more Tesla.

Application, page 4, *l.* 20. During the interview, Applicant discussed that it appeared to Applicant the Examiner was not utilizing this expressed definition when determining the scope of the claims. Applicant also directed the Examiner's attention to the recent Federal Circuit *en banc* opinion *Phillips v. AWH Corp.*, 75 U.S.P.Q.2d 1321, 1329 (Fed. Cir. 2005) (*en banc*), in which the Court stated the USPTO "determines the scope of claims in patent applications not solely on the basis of the claim language, but upon

giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” (quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004)).

The Examiner appears to have acknowledged Examiner had been applying too broad a definition for “high magnetic field” during his consideration of the claims and that, because “Telsa” is a unit used to measure the intensity of a magnetic field, a person of ordinary skill in the art, after reviewing the Application would understand that a “high magnetic field” is a magnetic field having a high intensity (which high intensity is 0.5 Tesla or more). *See* Examiner’s Interview Summary, at 2.

Examiner has further suggested that Applicant modify the defined term “high magnetic field” and replace it with –high intensity magnetic field – throughout the Application and the claims. *Id.* It is understood by Applicant (and Applicant believes to be likewise understood by the Examiner) that by doing so, the definition of “high intensity magnetic field” is precisely the same as “high magnetic field,” (*i.e.*, “a magnetic field in the range of 0.50 or more Tesla”) and that by making this amendment to the Application and claims, the scope of the claims remains precisely the same.

With such understanding, Applicant has so amended the Application and Claims 1-5, 7-10, and 18-21. Applicant respectfully asserts that the amendments to Claims 1-5, 7-10, and 18-21 (and also incorporated by reference in any claims depending therefrom), are not narrowing amendments made for a reason related to the statutory requirements for a patent that will give rise to prosecution history estoppel. *See Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S. Ct. 1831, 1839-40, 62 U.S.P.Q.2d 1705, 1711-12 (2002).

The only remaining amendment to the claims was to correct an antecedent basis in Claim 10.

No new matter is introduced as a result of these amendments to the Application or the Claims.

III. REJECTION UNDER 35 U.S.C. § 102

In the Final Office Action, the Examiner maintained his rejection of Claims 1, 7-9, and 18 under 35 U.S.C. § 102(a) & (e), as being anticipated by US Patent 2003/014313 to *Boulos et al.* hereafter ("*Boulos*"). Final Office Action, at 2. As noted above, Applicant understands the Examiner withdrew his rejections of these claims once he acknowledged the proper meaning of the phrase "high magnetic field" (now revised in the Application and the claims as "high intensity magnetic field") was the one expressly stated in the Application. See Examiner's Interview Summary, at 2.

IV. CONCLUSION

Applicant understands the rejections to Claims 1, 7-10, and 18 have been withdrawn. Claims 2-6, 11-17, and 19-26 are allowed.

The Applicants, therefore, respectfully assert that the Claims 1-26 are now in condition for allowance and request an early allowance of these claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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